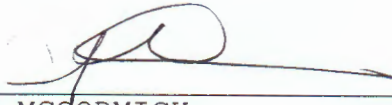


 ORIGINAL

Approved by: 
 JULIA MCCORMICK
 Special Assistant United States Attorney

Before: THE HONORABLE MARTIN R. GOLDBERG
 United States Magistrate Judge
 Southern District of New York

19 MJ 10991

| | | |
|--------------------------|---|--------------------|
| UNITED STATES OF AMERICA | : | MISDEMEANOR |
| | : | <u>COMPLAINT</u> |
| | : | |
| -v- | : | Violation of |
| | : | NYSPL 240.25 |
| | : | |
| KEVIN M. SMITH | : | |
| | : | |
| Defendant | : | COUNTY OF OFFENSE: |
| | : | WESTCHESTER |
| | : | |

SOUTHERN DISTRICT OF NEW YORK, ss.:

ANTHONY LUCIANO, being duly sworn, deposes and says that he is a Police Officer, assigned to the Department of Veterans Affairs Police Service, Montrose Veterans Administration Hospital, Montrose, New York, which is located in the Southern District of New York, and charges as follows:

COUNT ONE

On or about July 12, 2019, at the Montrose Veterans Administration Hospital, Montrose, New York, within the special maritime and territorial jurisdiction of the United States, in the Southern District of New York, KEVIN M. SMITH, the defendant, unlawfully, knowingly and willfully intentionally and repeatedly harassed another person by engaging in a course of conduct and be repeatedly committing acts which placed such person in reasonable fear of physical injury, to-wit, defendant was continually would show up in the victim's office without an appointment or would seek victim out in public settings and pulled victim's hair.

(New York State Penal Law, Section 240.25)

The basis for the deponent's knowledge and for the foregoing charges are, in part, as follows:

1. I am a Police Officer, assigned to the Department of Veterans Affairs Police Service, Montrose Veterans Administration Hospital, Montrose, New York, which is located in the Southern District of New York.
2. Upon information and belief, on or about July 12, 2019 at approximately 6:05 p.m., victim, Carolina Marrero-Estela, reported to police services to file a complaint against the defendant for the ongoing harassment she was experiencing.
3. Ms. Marrero-Estela reported that earlier in the evening when she was checking on another patient in the dining hall of building 5, the defendant walked up behind her and pulled on her ponytail. Ms. Marrero-Estela stated she at first thought it was someone she knew and when she turned around and saw it was the defendant, she was shocked and did not know how to respond. The incident was witnessed by a food service worker, Anthony Sciamatore. Mr. Sciamatore encouraged Ms. Marrero-Estela to report the incident.
4. Ms. Marrero-Estela stated she reported the defendant to her supervisor who then encouraged her to file a report with the police department. Ms. Marrero-Estela provided a timeline of her interactions with the defendant starting back in September 2018. Her first face to face was at an office visit in September 2018. Her second encounter was April 2018 for another face to face office visit. On May 7, 2019, the defendant approached Ms. Marrero-Estela in the dining room to go over his food preferences. This was her third face to face contact with the defendant.
5. On May 15, 2019, the VA hosted a VA2K walk. Ms. Marrero-Estela was walking with other staff members when the defendant joined the group and walked most of the walk with them. On June 21, 2019, the defendant reported to Ms. Marrero-Estela's office without an appointment to discuss meal/food preferences that had already been discussed. Upon leaving the office, the defendant left his hat in the office. Ms. Marrero-Estela did not notice the hat immediately. After the defendant had left, Ms. Marrero-Estela left her office and upon her return, the defendant called her asking if he had left his hat. When she confirmed that hat was in her office, the defendant was back in her office in under two minutes of the phone call ending. Ms. Marrero-Estela thought this odd behavior

since she had told him she had other things to do when he originally showed up in her office unannounced.

6. Ms. Marrero-Estala said the final incident was his pulling her ponytail on July 12, 2019.

7. On July 13, 2019, at approximately 12:55 p.m., Officer Falsetta interviewed the defendant regarding this incident. The defendant acknowledged the ponytail incident and stated he did not mean anything by it and reported all his contact with Ms. Marrero-Estala was professional. The defendant made a written statement indicating his poor judgement in pulling Ms. Marrero-Estala's hair and said he was just trying to get her attention and should have chosen a different method.

8. On July 26, 2019, at approximately 3:00 p.m., Officer Falsetta spoke with Mr. Sciamatore about the incident he witnessed on July 12, 2019 between Ms. Marrero-Estala and the defendant. Mr. Sciamatore stated the defendant walked up to Ms. Marrero-Estala and pulled her ponytail while she was attending to another veteran. Mr. Sciamatore stated he watched the defendant standing and waiting for Ms. Marrero-Estala's attention. When she finished with the other veteran, the defendant walked up to her as she was trying to make her way through the employee space. Mr. Sciamatore indicated he was worried for Ms. Marrero-Estala's safety and he advised her to report the incident.

9. Officer Falsetta was able to confirm via CCTV footage the incident on July 12, 2019 that occurred in the dining facility.

10. On August 14, 2019, the defendant was brought back to the police station for booking and processing. The defendant was issued one District Court Violation Notice for simple assault (DCVN Number 90044178/SY53 and one District Court Violation Notice for stalking 4th degree (DCVN Number 9044179/SY53).

WHEREFORE, deponent prays that the above-named defendant be imprisoned or bailed, as the case may be.

A handwritten signature in blue ink, appearing to read 'AL', is written over a horizontal line.

ANTHONY LUCIANO
VA Police Service

Sworn to before me this
22nd day of November 2019

A handwritten signature in blue ink, appearing to read 'MG', is written over a horizontal line.

HONORABLE MARTIN R. GOLDBERG
United States Magistrate Judge
Southern District of New York